

Transasia Commodities Invs. Ltd. v Giara
2022 NY Slip Op 30051(U)
January 10, 2022
Supreme Court, New York County
Docket Number: Index No. 162010/2019
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK PART 53

Justice

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TRANSASIA COMMODITIES INVESTMENT LIMITED,
Plaintiff,

INDEX NO. 162010/2019
MOTION DATE 01/04/2022
MOTION SEQ. NO. 004

- v -

CHRYSANTHI GIARA, MICHAEL ZOLOTAS
Defendant.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 137, 138, 140, 141, 144, 146

were read on this motion to/for TURNOVER PROCEEDING

TransAsia Commodities Investment Limited's (TransAsia Commodities) motion pursuant to CPLR 5225 for an order turning over Chrysanthi Giara's ownership interest in Aurora Properties, Inc. (Aurora Properties) to TransAsia Commodities and compelling Ms. Giara to disclose, bring within the jurisdiction, and make accessible to TransAsia Commodities all income, distributions, certificates, including all interests and shares in Aurora Properties, together with executed forms of unconditional assignment and transfer to TransAsia Commodities, must be granted because TransAsia Commodities was granted a money judgment against Ms. Giara, the judgment remains unpaid and she owns interests in property that is rightfully turned over pursuant to CPLR 5225. Gliklad v Chernoi, 129 AD3d 604 (1st Dept 2015).

The facts of this case are set forth in this court's Prior Order (hereinafter) defined and are presumed. Briefly, by Judgment dated February 8, 2018 (the Judgment; NYSCEF Doc. No. 3), the court (Ramos, J.) in a related action granted a money judgment for \$22,262,965.44 against NewLead JMEG, LLC, NewLead Holdings, Limited, NewLead Holdings (US) Corp., Michael

Zolotas, and Jan Berkowitz. The Judgment was affirmed by the First Department (*TransAsia Commodities Inv. Ltd v NewLead JMEG, LLC*, 169 AD3d 591 [1st Dept 2019]).

Subsequently, TransAsia Commodities brought this proceeding to collect on the Judgment. TransAsia Commodities asserted that Ms. Giara and Mr. Zolotas frustrated efforts to collect on the judgment by, among other things, dissipating assets by opening and closing various corporate entities, including Aurora Properties, and fraudulently conveying funds through a bank account at Citi Private Bank. By decision and order (the **Prior Order**; NYSCEF Doc. No. 106), dated September 27, 2021, this court granted the petition and the default motion against Ms. Giara and Mr. Zolotas and denied Ms. Giara's cross-motion to dismiss. The court also granted a judgment against Ms. Giara and Mr. Zolotas and in favor of TransAsia Commodities in the amount of \$1,020,078.48 as against the total outstanding amount set forth in the Judgment (NYSCEF Doc. No. 118).

CPLR 5225(a) states in relevant part that "where it is shown that the judgment debtor is in possession or custody of money or other personal property in which he has an interest, the court shall order that the judgment debtor pay the money...to the judgment creditor..." Ownership interests are property that can be properly turned over pursuant to CPLR 5225 (*Gliklad*, 129 AD3d at 604).

Aurora Properties was initially controlled by Mr. Zolotas, who was Aurora Properties's Chairman, CEO, and a member of the Board of Directors (NYSCEF Doc. No. 126). The minutes of a special meeting of the Board of Directs, dated May 28, 2010 (NYSCEF Doc. No.

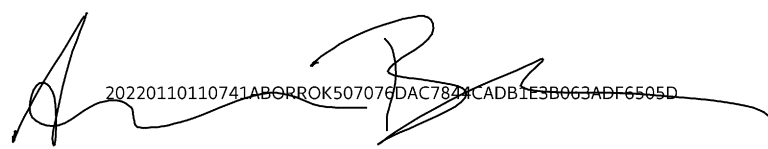
128) reflect that Mr. Zolotas resigned as President and Director of Aurora Properties and Ms. Giara was appointed as the new President, Director, Treasurer, and Secretary. At the meeting, it was also resolved that a certificate for the entirety of the share capital of Aurora Properties would be executed and delivered to Ms. Giara (NYSCEF Doc. No. 129). Ms. Giara's position as the sole director, president, and treasurer of Aurora Properties and the sole shareholder of Aurora Properties was reflected in a Certificate of Incumbency (NYSCEF Doc. No. 130). Ms. Giara testified in a prior affidavit that she was the sole shareholder of Aurora Properties (NYSCEF Doc. No. 131). Because it is undisputed that Ms. Giara is the sole shareholder of Aurora Properties and that the Judgment remains unsatisfied, turnover of the shares pursuant to CPLR 5225 is appropriate.

Ms. Giara's arguments in opposition are unavailing. Ms. Giara's counsel agreed to service by NYSCEF by entering this case as counsel of record on NYSCEF, and this motion was properly filed on NYSCEF. The ex parte order providing for alternate service (the **Ex Parte Order**; NYSCEF Doc. No. 74) set forth alternate service where service of the motion for a default judgment pursuant to CPLR 308(1) was deemed impractical. The requirement in the Ex Parte Order that future submissions be served on Ms. Giara's and Mr. Zolotas's counsel by email did not create additional obligations for service of papers that need only be served on NYSCEF. The requested relief is not overbroad, as Ms. Giara asserts, because, although the order is not being granted as against Aurora Properties, Ms. Giara is the sole member of Aurora Properties and, therefore, all the property and assets of Aurora Properties must be made available to TransAsia Commodities.

It is accordingly hereby ORDERED that TransAsia Commodities' motion for the turnover of Ms. Giara's shares of Aurora Properties is granted; and it is further

ORDERED that Ms. Giara shall, within 60 days of the date of this order, disclose, bring within the jurisdiction, and make accessible for TransAsia Commodities, all cash, income, distributions, certificates, including all interest and shares in Aurora Properties, together with executed forms of unconditional assignment and transfer to TransAsia Commodities.

1/10/2022
DATE



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ANDREW BORROK, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
		<input type="checkbox"/>	OTHER
		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: